IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIRST DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION No. 5571 of 1999

Between:

K. Shaker, S/o K.Swamy,
R/o Dilsukhnagar, Hyderabad.

..... PETITIONER

AND

1 The Hon'ble Labour Court-III,
Hyderabad.
2 The Depot Manager, A.P.S.R.T.C,
Hayathanagar Depot, Hayathanagar

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order, direction or Writ more particularly one in the nature of Writ of Certiorari and after calling the records in I.D. No. 149/94 on the file of the 1st Respondent and quash the Award dated 19-12-1997 in so far as denying the continuity of service, back wages and attendant benefits as illegal, arbitrary and unjust and consequently direct the Respondent to grant continuity of service, back wages and attendant benefits and pay accordingly.

Counsel for the Petitioner: MR.V.VISWANATHAM

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: MR V.T.M.PRASAD

The Court made the following:

ORDER:

This writ petition is filed by the workman, being aggrieved by the award passed by the Labour Court-III, Hyderabad (for short 'the Tribunal') in I.D.No.149 of 1994, dated 21.11.1997 in so far as denying the continuity of service, back wages and attendant benefits while granting relief of reinstatement into service.

The petitioner-workman was appointed as a Driver in Andhra Pradesh State Road Transport Corporation with effect from 10.11.1987. While so, when working at Hyathnagar Bus depot, he was served with charge sheet on 09.02.1992 enumerating the following charges:

> "1. For having absented for duty unauthorisedly from 28.02.1992 to till date without prior sanction of leave of production of any medical certificate in time, due to which, dislocation of services and loss of revenue to the Corporation, besides causing inconvenience to the traveling public which constitutes misconduct under Regulation No.28 (xxviii) of APSRTC Employees (Conduct) Regulations 1963;
>
> 2. For habituated irregular attendance and absented for 11 days from the date of reporting Hayatnagar depot to till date which constitute misconduct under Regulation 28 (xxviii) of APSRTC Employees (Conduct) Regulations, 1963;"

After conducting a detailed enquiry into the matter and following the formalities, the petitioner was removed from service by an order dated 27.08.1992 of the disciplinary authority. Aggrieved by the same, he filed an appeal and the same was also rejected by an order dated 27.08.1993. Having no other option the petitioner filed an application under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the

Act') before the Tribunal and the same was taken up on file as I.D.No.149 of 1994. Before the Tribunal though no oral evidence was let in by both parties, on behalf of the Management, some documents were marked as Exs.M1 to M15. The petitioner filed a memo accepting the validity of the domestic enquiry conducted by the management. Therefore, on the basis of the documentary evidence made available on record, the Tribunal came to the conclusion that the charges are proved, however, the punishment of removal from service is disproportionate to that of the misconduct and therefore, directed the respondent-Management to reinstate the petitioner into service, but without continuity of service and without any back wages and attendant benefits. According to the petitioner, since he had clean past record of service and also this being the first misconduct, denial of continuity of service and full wages is arbitrary and illegal. The Tribunal ought to have granted continuity of service and also back wages. Hence this writ petition.

Though no counter is filed, the learned counsel for the respondent-management denied the allegations made in the affidavit filed in support of the writ petition and also strenuously contended that in a span of three months, the petitioner remained absent for 13 days without prior intimation, therefore, the management had taken a serious view of the matter and removed the petitioner from service. When a driver absent from duty, it is difficult for the management to put the buses on move and it also causes inconvenience to the public. In this case, the petitioner by being absent for 13 days in a short span of three months not only caused inconvenience to travelling public but also caused loss of revenue to the Corporation. Further, the Tribunal itself had taken a lenient view of the matter and no further interference can be made by this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the award passed by the Tribunal and other material made available on record.

At the outset, it may be noticed that the petitioner-workman did not challenge the validity of the domestic enquiry. Therefore, the Tribunal has evaluated the evidence made available before it and found the charges are proved. However, the Tribunal found that the punishment awarded by the disciplinary authority as confirmed by the appellate authority is disproportionate to that of misconduct alleged, therefore, directed reinstatement of the petitioner, but without continuity of service and without

any back wages and attendant benefits.

Therefore, only consideration that required to be made is whether the petitioner is entitled for any further relief than what has already been granted by the Tribunal.

The petitioner has rendered more than five years of service prior to his removal from service and there were no remarks against him and no misconduct was attributed to him. Thus, he had a clean record of service. Even for the present misconduct, the petitioner absented intermittently for 13 days in a span of three months and he submitted an explanation to that effect stating that he became sick intermittently and therefore, he could not attend the duties and sent a medical certificate issued by the Medical Officer of a Government Hospital, Malakpet, wherein the Doctor certified that the petitioner may be granted two weeks leave from 28.02.1992. This certificate was submitted only after when he was called to submit his explanation for his absence. However, since there was no misconduct on his part either of the similar nature or any other misconduct prior to his removal from service, and the petitioner was absented for 13 days intermittently in a span of three months, I am of the opinion that he is also entitled to further relief of continuity of service, but without back wages and attendant benefits.

Having regard to the facts and circumstances of the case, I deem it appropriate to modify the award passed by the Labour Court.

In the result, the respondent-management is directed to reinstate the petitioner into service with continuity of service, but without back wages and without attendant benefits.

Accordingly, the Writ Petition is allowed to the extent indicated above. No order as to costs.

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C.V.RAMULU,J

Dated: 21.07.2005

Dsr

That Rule Nisi has been made absolute as above.

Witness the Hon’ble Sri Bilal Nazki, the Acting Chief Justice on this the Thursday, Twenty first day of July, Two thousand and five.

ASSISTANT REGISTRAR

To:

1. The Presiding Officer,

Labour Court-III,

Hyderabad

2. The Depot Manager, APSRTC,

Hayathnagar Depot,

Hayathnagar

3. Two CCs to the Government Pleader for Labour,

High Court Buildings, Hyderabad (OUT)

4. Two CD copies

*Form-NIC-OGS/WP{**VEENA**}*